

UNITED STATES BANKRUPTCY COURT  
 NORTHERN DISTRICT OF INDIANA  
 HAMMOND DIVISION

IN RE: ) Chapter 11  
 )  
 Algozine Masonry Restoration, Inc. ) Case No. 16-23208  
 )  
 Debtor. )  
 \_\_\_\_\_ )

**DEBTOR’S EMERGENCY MOTION  
 FOR AUTHORITY TO USE CASH COLLATERAL**

Algozine Masonry Restoration, Inc. as debtor and debtor-in-possession (the “Debtor”), by counsel, hereby requests the entry of an Order pursuant to 11 U.S.C. §§ 361 and 363 and Federal Rule of Bankruptcy Procedure 4001(b) (“Rule 4001(b)”) authorizing the use of Cash Collateral, as defined in 11 U.S.C. § 363(a), on an interim basis pending a final hearing, and the granting of replacement liens. In support of its motion, the Debtor states as follows:

**I. Rule 4001(b) Statement – Cash Use**

1. The Debtor, in compliance with Rule 4001(b), hereby offers the following summary of the relief requested in this emergency motion:

a. Name of Each Entity with an Interest in the Cash Collateral (the “Cash Collateral Creditors”):

	Obligation Secured	Amount	Collateral
Ridgestone Bank  Loan secured also by property owned by Co-Debtor Algozine Properties LLC, located at 2000 North Lafayette Court, Griffith,	Term Loan	\$1,069,377.90	Blanket lien on all assets, including real property owned by Co-Debtor

Indiana			
Snap Financial	Revolving Line of Credit	\$256,946.00	Blanket lien on all assets
Kabbage Lending	Revolving Line of Credit	\$43,107.00	Blanket lien on all assets
Bank de Leon	Revolving Line of Cred	\$72,500.00	Blanket lien on all assets
Arch Capital	Revolving Line of Cred	\$62,950.00	Blanket lien on all assets
Platinum Rapid Funding	Revolving Line of Cred	\$113,000	Blanket lien on all assets
Internal Revenue Service	Statutory Lien	\$334,445.54	Blanket lien on all assets
Gilco Scaffolding Co. LLC	Judgement creditor	\$114,474.00	All tools, Equipment, vehicles, and office material used in conducting business for Debtor

b. Purposes for the Use of Cash Collateral: As set forth in more detail in this motion and the attached Budget (as defined herein), the Debtor proposes to use Cash Collateral to meet its post-petition obligations and to pay its operating and administrative expenses incurred after the Petition Date.

c. Terms and Duration: The Debtor seeks authority to use Cash Collateral pursuant to the Budget on an interim basis pending a final hearing on this motion, at which time the Debtor will use Cash Collateral pursuant to the Budget through February 3, 2013. The Debtor shall expend its Cash Collateral only for the items, and in the amounts, set forth in the Budget, plus a variance versus the Budget of up to 10% overall and for each line item; provided, however, that medical claims shall be paid in the amounts for which the Debtor is obligated as determined by the third party administrator and, where appropriate, by the stop loss insurer.

d. Adequate Protection. As adequate protection for the diminution in the value (if any) of the Cash Collateral Creditors' interests in the Cash Collateral existing as of the Petition Date, pursuant to §§ 361 and 363 of the Bankruptcy Code, the Debtor proposes to offer the Cash Collateral

Creditors:

- i. replacement liens on all property of the Debtor of the same type, description and priority as the Cash Collateral Creditors' pre-petition collateral to the extent that the Cash Collateral Creditors hold valid, properly perfected liens on such collateral as of the Petition Date and to the extent that there is any diminution in value of such property resulting from the Debtor's postpetition use of such property the priority of which shall be senior to all other claims, including, but not limited to, claims pursuant to §§ 503(b), 507(a), 509(b) and 726 (b) of the Bankruptcy Code but excluding claims of the U.S. Trustee and subject to the Carve-Out (defined below);
  - ii. to maintain insurance on the Debtor's property;
  - iii. to maintain and care for the Debtor's property post-petition in a manner consistent with the Debtor's maintenance and care for such property pre-petition;
  - iv. to provide the Cash Collateral Creditors with monthly operating reports upon filing with the Court and the U.S. Trustee;
  - v. to permit the Cash Collateral Creditors or their representatives access to any of the Debtor's premises, on reasonable prior notice, to inspect the Debtor's books and records and the Cash Collateral Creditors' collateral;
- e. Professional Fee Carve-Out. The Debtor seeks a carve-out for professional fees, costs, and expenses of attorneys, accountants, investment bankers, financial advisors or other professionals retained by the Debtor (the "Debtor Professionals") equal to the amount of the Debtor Professionals' retainers, and in no event to exceed the total amount approved by the Court as reasonable and necessary (the "Carve-Out").

## II. Background

2. On November 10, 2016 (the “Petition Date”), the Debtor filed a voluntary petition under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtor continues to operate its business and manage its property as a debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

3. No trustee or examiner has been appointed in this chapter 11 case. No official unsecured creditors’ committee has yet been appointed in this case.

4. This motion has been filed as an emergency motion due to the critical nature of the relief requested.

5. The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (M). The relief requested flows from the statutory scheme codified by the Bankruptcy Code, addresses an area of law long determined by Bankruptcy Courts, and is purely a creature of federal law. Accordingly, this Court has jurisdiction and authority to hear this matter and enter a final judgment under *Stern v. Marshall*, 131 S.Ct. 2594, 180 L.Ed.2d 475 (U.S. 2011) and *In re Ortiz*, 665 F.3d 906 (7<sup>th</sup> Cir. 2011).

6. Counsel for the Debtor has discussed the filing of this case with the United States Trustee, and has advised the United States Trustee of this and other emergency motions that are being filed contemporaneously with this motion.

## III. Events Leading to Filing

7. The Affidavit of David Algozine describes the nature of the Debtor’s operations and the events that precipitated this emergency filing (the “Affidavit”). A copy of the Affidavit is attached hereto as **Exhibit A** and incorporated herein.

#### IV. Relief Requested

8. As of the Petition Date, the Debtor is indebted to the Cash Collateral Creditors in the approximate amount of \$2,066,800.44. The Debtor believes that the obligations of most of these claims are secured by valid, enforceable and non-avoidable liens and security interests in substantially all of the property owned by the Debtor.

9. The Debtor has an immediate need to use Cash Collateral which is subject to the liens in favor of the Cash Collateral Creditors, in order to maintain the value of the Debtor's assets and maintain operations. Use of Cash Collateral is necessary to prevent the immediate and irreparable harm to the Debtor and its property that would otherwise result if the Debtor is prevented from obtaining use of Cash Collateral.

10. The Debtor has explored alternative borrowing sources; however, there is at present no alternative borrowing source from which to secure additional funding to operate its business without utilizing Cash Collateral.

11. The Debtor is unable to operate its business without interim use of Cash Collateral.

12. Without interim relief, the Debtor would not be able to operate its business for fourteen (14) or more days until a final hearing on this motion can be held. Accordingly, the Court, as a preliminary matter, should enter an interim order authorizing the Debtor to use Cash Collateral consistent with the cash use budget attached to this motion as **Exhibit B** (the "Budget") subject to the variance described in the Proposed Adequate Protection.

13. All of the Debtor's cash and cash equivalents (cash and accounts receivable) as of the Petition Date and all proceeds thereof securing the Debtor's obligations to the Cash Collateral Creditors, among other things, constitute "cash collateral" as that term is defined in § 363(a) of the Bankruptcy Code. On the Petition Date, the Debtor had cash on hand or in deposit in the

approximate amount of \$5,225.51 and accounts receivable in the approximate amount of \$39,585.06, which, together with proceeds, are cash collateral within the meaning of § 363(c)(2) of the Bankruptcy Code (all, “Cash Collateral”).

14. The Debtor’s financial projections for this period contained in the Budget show that the Debtor will use Cash Collateral only for its expenses incurred in the ordinary course of business and in the administration of the Debtor’s chapter 11 case.

#### **V. Basis for the Relief Requested**

15. Pursuant to § 363(c)(2)(B) of the Bankruptcy Code and Rule 4001(b), the Debtor requests that the Court enter an Order authorizing its interim use of Cash Collateral for payment of its ordinary and necessary operating expenses and the costs of administering the Debtor’s chapter 11 case through the date of a final hearing on this motion, as detailed in the Budget.

16. The Cash Collateral Creditors, as holders of valid, perfected and non-avoidable security interests in the Cash Collateral, are entitled to adequate protection of their respective interests in the Cash Collateral to be protected from any diminution in the value of such Cash Collateral resulting from the Debtor’s postpetition use of Cash Collateral. Accordingly, the Debtor requests authority to provide the Cash Collateral Creditors with the Proposed Adequate Protection set forth in paragraph 1(d) herein.

17. In the event that the Court does not authorize the use of Cash Collateral, the Debtor believes that it will not be able to maintain its current business operations. Accordingly, without the use of Cash Collateral the Debtor will be seriously and irreparably harmed, resulting in significant losses to the Debtor’s estate and its creditors. This is especially true where any interruption in the Debtor’s business would significant affect the value of the Debtor’s assets and ability to be sold as a going concern.

WHEREFORE, the Debtor respectfully requests that the Court enter an Order: (1) authorizing and allowing the Debtor to use Cash Collateral on an interim basis for its general ongoing business expenses and chapter 11 administrative expenses through the entry of a final Order on the motion pursuant to § 363(c)(2)(B) of the Bankruptcy Code; (2) authorizing and allowing the Debtor to use Cash Collateral on a final basis for its general ongoing business and administrative expenses after a final hearing on this motion; (3) authorizing and allowing the Carve-Out; and (4) granting the Debtor such other and further relief as the Court deems proper.

Algozine Masonry Restoration, Inc.

By: /s/O. Allan Fridman  
O. Allan Fridman, its proposed counsel

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